

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MICHAEL RAY WHEELER,

Case No. 3:12-cv-00469-MMD-WGC

Petitioner,

ORDER

v.

JAMES COX, et al.,

Respondents.

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. On April 30, 2015, this court granted petitioner's motion to reopen the case. (Dkt. no. 35.) On June 17, 2015, petitioner filed an amended petition. (Dkt. no. 37.)

It therefore is ordered that respondents shall file a response to the petition, including potentially by motion to dismiss, within ninety (90) days of service of the petition, with any requests for relief by petitioner by motion otherwise being subject to the normal briefing schedule under the local rules. Any response filed shall comply with the remaining provisions below, which are entered pursuant to Habeas Rule 4.

It further is ordered that any procedural defenses raised by respondents in this case shall be raised together in a single consolidated motion to dismiss. In other words, the Court does not wish to address any procedural defenses raised herein either in *seriatum* fashion in multiple successive motions to dismiss or embedded in the answer. Procedural defenses omitted from such motion to dismiss will be subject to potential waiver. Respondents shall not file a response in this case that consolidates their procedural defenses, if any, with their response on the merits, except pursuant to 28

1 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly lacking merit. If respondents
2 do seek dismissal of unexhausted claims under § 2254(b)(2): (a) they shall do so within
3 the single motion to dismiss not in the answer; and (b) they shall specifically direct their
4 argument to the standard for dismissal under § 2254(b)(2) set forth in *Cassett v.*
5 *Stewart*, 406 F.3d 614, 623-24 (9th Cir. 2005). In short, no procedural defenses,
6 including exhaustion, shall be included with the merits in an answer. All procedural
7 defenses, including exhaustion, instead must be raised by motion to dismiss.

8 It further is ordered that, in any answer filed on the merits, respondents shall
9 specifically cite to and address the applicable state court written decision and state
10 court record materials, if any, regarding each claim within the response as to that claim.

11 It further is ordered that petitioner shall have thirty (30) days from service of the
12 answer, motion to dismiss, or other response to file a reply or opposition, with any other
13 requests for relief by respondents by motion otherwise being subject to the normal
14 briefing schedule under the local rules.

15 DATED THIS 19th day of June 2015.

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18 MIRANDA M. DU
19 UNITED STATES DISTRICT JUDGE
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